LYNCHBURG TRUST & SAVINGS BANK v. A. G. ELLIOTT & CO.—Decided at Wytheville, June 24, 1897.—*Buchanan*, J:

1. FORTHCOMING BONDS—*How payable—Lien of—Effect of bond payable to sheriff.* A forthcoming bond taken under sec. 3617 of the Code and made payable to the sheriff instead of the execution creditor as required by that section does not have the force of a judgment against the obligors therein under sec. 3619 of the Code. The lien given by sec. 3619 being statutory, the steps which lead up to it must be substantially in accordance with the provisions of the statute which create it. The bond is inoperative as a statutory bond and creates no lien, though it may be a good common law bond and the sheriff may sue upon it. In the absence of a statute to that effect, a bond payable to one person cannot operate as a lien in favor of another.

HAZLEWOOD AND OTHERS v. FORRER.—Decided at Wytheville, June 24, 1897.—*Cardwell*, J:

1. FRAUDULENT CONVEYANCES—*Suits to avoid—Proof required—Case at bar.* In order to set aside a deed on the ground of fraud, the fraud must not only be charged, but clearly proved, and guilty knowledge or participation of the grantee must be shown. But the transaction itself may furnish proof of the fraud so satisfactory and conclusive as to outweigh the answers of the defendants denying the fraud, or even the evidence of witnesses. In the case at bar the fraud of the grantor and participation of the grantee are fully established.

2. JUDICIAL SALES—*Inadequacy of price.* Where a judicial sale has been sufficiently advertised, well attended, and fairly conducted, it should not be set aside for inadequacy of price merely because the bill, which was filed three years before the sale, charged that the property was worth a much larger sum than it brought at the judicial sale.

KINNIER'S ADM'R v. WOODSON AND OTHERS.—Decided at Wytheville, June 24, 1897.—*Keith*, P:

1. FRAUDULENT CONVEYANCES—*Presumption against wife of an insolvent husband—How overcome—Case at bar.* In a suit by creditors of an insolvent husband to subject to the payment of their debts property acquired during the coverture and conveyed to the wife, although the presumption is that the husband furnished the consideration and that the property is his, yet this presumption may be rebutted by proof, and it is rebutted by showing that the husband could not have furnished the consideration, and that the wife was engaged in business as a sole trader from which resources might reasonably be expected with which to make the purchase. In the case at bar it is at least shown that the consideration must have been furnished from some source other than the husband, and this is sufficient.

MASONIC TEMPLE ASSOCIATION v. BANKS.—Decided at Wytheville, June 24, 1897.—*Riely*, J:

1. CHANCERY JURISDICTION—*Injunction—Nuisance—Irreparable injury—Public works.* Courts of equity have jurisdiction to restrain by injunction the commission or continuance of a nuisance which is likely to produce irreparable injury;

and the injury is irreparable if it is a grievous one, or a material one, and not adequately reparable in damages. It is no answer to say that the owner of property may ward off the evil effects and consequences of a nuisance at his own expense. A court of equity will enjoin its continuance, especially if it be a matter likely to affect health. The public nature of the work which creates the nuisance does not prevent a court of equity from enjoining the contractor from doing it in such manner as to create a nuisance, especially when it appears that it might be safely done in another manner at a small additional expense to the contractor. Obstructing a stream so as to cause it to flood the cellar of another is a nuisance.

SMITH v. PACKARD, TRUSTEE.—Decided at Wytheville, July 1, 1897. *Cardwell*, J:

1. ASSUMPSIT—*General and special counts—Special contract—Substantial compliance—Measure of damages.* In an action of assumpsit upon a special contract for work performed by the plaintiff for the defendant, where the declaration contains the common counts and also special counts on the contract, if the plaintiff prove a substantial, though not strict, compliance with the contract alleged and that the defendant has accepted the work as done and received benefits therefrom, the plaintiff is entitled to recover the contract price of his work less such sum as will fully compensate the defendant for imperfections in the work done or materials used.

2. CONTRACTS—*Work not done according to—Objections—Acceptance of work.* When work is done under a special contract, if not done in accordance with the contract objection on that account should be made at the time. The acceptance of the work is an admission that it is of some benefit to the party accepting and that the workman is entitled to some remuneration.

3. VERDICT—*Responsive to issue—Case at bar.* The verdict in the case at bar is responsive to the issues made by the pleadings. It is free from confusion and there was no difficulty in entering judgment upon it. The pleas upon which issues were joined were non-assumpsit, payment, and set-offs. The verdict found for the plaintiff and assessed the amount of his damages and also fixed the amount allowed the defendant on his set-offs. This was all that was necessary.

HANSBROUGH, EXECUTOR, v. NEAL, FEATHERSTON & CO.—Decided at Wytheville, July 1, 1897.—*Buchanan*, J:

1. PAROL EVIDENCE—*Admissibility to prove custom or usage as to price of services in absence of contract.* In the absence of any express agreement as to the amount or time of payment for work contracted to be done, parol evidence is admissible to show a certain usage of the business and of the locality known to the parties, or so general and well settled as to raise the presumption that the parties dealt with reference to the usage and with a tacit understanding that their rights and responsibilities should be determined thereby.

2. CUSTOM OR USAGE—*Averment in pleadings.* In an action to recover for services performed what they are reasonably worth, it is unnecessary to aver in the pleadings a local custom or usage by which the value of the services are fixed, as the plaintiff is entitled to recover what is usual and customary for like services.